

	<b>INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY</b>	
	<b>Chapter 13:</b> Background Checks	<b>Effective Date:</b> July 1, 2019
	<b>Section 2:</b> Evaluation of Background Checks for Licensed Residential Facilities and Child Placing Agency	<b>Version:</b> 6

## STATEMENTS OF PURPOSE

The Indiana Department of Child Services (DCS) will evaluate the results of Fingerprint-Based National Criminal History Checks (Fingerprint-Based Checks) on all required persons for the purpose of licensing Residential Facilities and Child Placing Agencies (referred to collectively as “DCS licensed agencies”). The DCS licensed agency will evaluate the remaining background checks. See policy, [13.1 Conducting Background Checks for Licensed Residential Facilities and Child Placing Agency](#).

### **Fingerprint-Based Check**

The DCS Central Office Background Check Unit (COBCU) will evaluate the results of the Fingerprint-Based Check and notify the assigned DCS licensed agency contact person of the criminal history clearance status by e-mailing the Fingerprint-Based Check Status Letter.

The COBCU will conditionally disqualify all persons whose criminal history is incomplete and requires further verification.

**Note:** The subject of the check will remain in a conditionally disqualified status until the subject provides the COBCU with a copy of the required verification of charges, including, but not limited to court orders showing disposition and level of conviction, a court order showing dismissal, and/or arrest reports. Upon receipt of all necessary verifications, the COBCU will re-evaluate the status and issue an amended Fingerprint-Based Check Status Letter to the assigned DCS licensed agency contact person by e-mail.

The COBCU will disqualify all persons whose criminal history report includes the following convictions or pending convictions, although some may be eligible to file for a waiver (see [“Waivers”](#) section):

1. Any misdemeanor that may relate to the health and/or safety of a child;
2. Any felony;
3. Four (4) or more misdemeanor convictions; or
4. A juvenile adjudication for an act that if committed by an adult would be one (1) of the 30 felonies listed in the waiver section below.

The COBCU will qualify all persons whose Fingerprint-Based Check Report has no criminal history or reflects arrests and/or convictions that do not result in a conditionally disqualified or disqualified status.

### **Child Protective Services (CPS) History Check**

The DCS licensed agency will review the completed CPS History Check results from Indiana and all other states of residency within the past five (5) years (if applicable), and the DCS licensed agency will determine if there are reports of any substantiations of child abuse and/or neglect (CA/N) for the subject of the check. If there is a substantiated CPS history in Indiana or the equivalent in another state, the filing and approval by COBCU of a CPS waiver is required for consideration of, or continued, employment, volunteering, or contracting (see [“Waivers”](#) section).

### **National Sex Offender Registry Check**

The DCS licensed agency will evaluate the National Sex Offender Registry Checks to determine if there are any matches. If there is a match, the subject of the check cannot be employed, volunteer, or contract for the facility, and the DCS licensed agency will notify the COBCU immediately. The COBCU will re-evaluate the Fingerprint-Based Check report and reissue an amended Fingerprint-Based Check Status Letter, if applicable.

### **Local Criminal Court Records Check**

The DCS licensed agency will evaluate the results of the Local Criminal Court Records Check. See Policy [13.1 Conducting Background Checks for Licensed Residential Agencies and Child Placing Agency](#) for more information regarding who should complete the Local Criminal Court Records Checks. If this name-based court record check returns convictions for a felony, total of four (4) or more misdemeanors, or a misdemeanor that may relate to the health and safety of a child, the DCS licensed agency shall contact COBCU for additional guidance if the fingerprint based status letter was qualified.

### **Waivers**

Upon receipt of the positive written recommendation of support for employment, volunteering, or contracting from the DCS licensed agency Executive Director or HR Director, COBCU will accept a request for a waiver of disqualified juvenile history or of substantiated CPS history. COBCU will also accept a waiver of disqualifying criminal history if the subject of the check has not been convicted, or is pending conviction, of any of the felonies listed below (as defined by Indiana Criminal Code):

1. Murder;
2. Causing suicide;
3. Assisting suicide;
4. Voluntary manslaughter;
5. Involuntary manslaughter;
6. Reckless homicide;
7. Feticide;
8. Battery within the past five (5) years;
9. Domestic battery;
10. Aggravated battery;
11. Criminal recklessness within the past five (5) years;
12. Strangulation;
13. Kidnapping;
14. Criminal confinement within the past five (5) years;
15. Human and sexual trafficking;
16. A felony sex offense under ([IC 35-42-4](#));
17. Arson within the past five (5) years;
18. Incest;
19. Neglect of a dependent;
20. Child selling;

21. Reckless supervision;
22. Nonsupport of a dependent child within the past five (5) years;
23. Operating a motorboat while intoxicated within the past five (5) years;
24. A felony involving a weapon under [\(IC 35-47\)](#) within the past five (5) years;
25. A felony relating to controlled substances under [\(IC 35-48-4\)](#) within the past five (5) years;
26. An offense relating to material or a performance that is harmful to minors or obscene under [\(IC 35-49-3\)](#);
27. A felony under [IC 9-30-5](#) (driving while intoxicated) within the past five (5) years;
28. A felony related to the health or safety of a child (as defined in [IC 31-9-2-13\(h\)](#)) or an endangered adult (as defined in [IC 12-10-3-2](#));
29. Attempt [\(IC 35-41-5-1\)](#) to commit a felony listed in subdivisions one (1) through 28. If a conviction for a felony is nonwaivable for a stated duration under subdivisions one (1) through 28, a conviction for an attempt to commit the felony is nonwaivable for the same duration under this subdivision; and
30. A felony that is substantially equivalent to a felony described in subdivisions one (1) - 29 for which the conviction was entered in another jurisdiction. If a conviction for a felony is nonwaivable for a stated duration under subdivisions one (1) through 29, a conviction for a substantially equivalent felony in another jurisdiction is nonwaivable for the same duration under this subdivision.

The DCS licensed agency will immediately ensure the subject of the check will not be employed, volunteer, or contract with the agency if the criminal or waiver process subsequently reveals:

1. Disqualified criminal history that is not eligible to be waived;
2. Disqualified criminal history or substantiated CPS history in which a waiver action is not supported or pursued by the DCS licensed agency; or
3. Disqualifying criminal history or substantiated CPS history in which a waiver is not granted by DCS.

The decision of the Background Check Waiver Committee regarding criminal and/or CPS waiver is not subject to appeal. However, if the subject's situation were to change and/or additional information is obtained, a new waiver packet may be resubmitted for re-evaluation by COBCU. A new evaluation will then be completed, and a subsequent official decision will be issued.

#### Code References:

1. [IC 31-27-3-3: Applying for a Child Caring Institution License](#)
2. [IC 31-27-3-5: Grounds for denial of license applications; waiver](#)
3. [IC 31-27-5-4: Apply for licenses; criminal history checks](#)
4. [IC 31-27-5-6: Grounds for denial of license applications; waiver](#)
5. [IC 31-27-6-2: Apply for licenses; criminal history checks](#)
6. [IC 31-27-6-3: Grounds for denial of license applications; waiver](#)
7. [IC 31-9-2-84.8: Nonwaivable offense](#)

### **PROCEDURE**

DCS Residential Licensing staff will ensure that the DCS licensed agency completes the following:

1. Review the results letter received from COBCU for a Fingerprint-Based Check;

- a. Provide a copy of the Fingerprint-Based Check Status Letter to the subject of the check,
  - b. Instruct the subject of the check to contact the COBCU Consultant listed on the Fingerprint-Based Check Status Letter and provide the required documentation to that COBCU Consultant within 10 business days of the date of the fingerprint-based status results letter when the fingerprint-based status returns as conditionally disqualified. Upon receipt of the required information, the COBCU Consultant will reevaluate and issue an amended fingerprint status letter reflecting Qualified or Disqualified. If the subject of the check is conditionally disqualified, they may not be hired, volunteer, or contract with the DCS licensed agency. If already employed, volunteering, or contracting, the subject of the check must have the conditionally disqualified status resolved within 10 business days. If resolved satisfactorily, the DCS licensed agency will receive an amended fingerprint-based status letter from COBCU of Qualified before the end of the 10<sup>th</sup> business day. If the DCS licensed agency does not receive an amended qualified status before the end of the 10<sup>th</sup> business day, the subject of the check shall be removed from the schedule immediately, or the DCS licensed agency will ensure the subject of the check will not be employed, volunteer, or contract with the agency. Upon re-evaluation, refer to “c” below if the status is disqualified, and/or
  - c. Instruct the subject of the check to contact the COBCU Consultant listed on the Fingerprint-Based Check Status Letter in order to determine whether he or she is eligible to apply for a waiver when the fingerprint-based status returns as disqualified and the DCS licensed agency is in support of pursuing a criminal history waiver for the subject of the check. If eligible and the DCS licensed agency supports the waiver, the DCS licensed agency and the subject of the check shall work together to submit a complete waiver packet to COBCU as quickly as possible (see [Practice Guidance](#) regarding applying for a waiver). If the subject of the check is disqualified they may not be hired, volunteer, or contract with the DCS licensed agency unless the necessary waiver(s) have been granted. If already employed, volunteering, or contracting, the DCS licensed agency will immediately remove the subject from the work schedule, unless the necessary waiver(s) have been granted.
2. Review the results of the CPS History Check:
  - a. The DCS licensed agency will give the subject of the check a copy of the completed [Indiana Request for a Child Protection Services \(CPS\) History Check \(SF 52802\)](#) form showing substantiated history if a substantiated CPS history is discovered from Indiana (see policy, [2.6 Sharing of Confidential Information](#)), and
  - b. The DCS licensed agency and the subject of the check will work together to submit a complete waiver packet to COBCU as quickly as possible when CPS substantiation is discovered and the DCS licensed agency is in support of pursuing the CPS history waiver. A request for a CPS waiver should be filed and processed at initial agency licensing, agency relicensure, hiring, or discovery of any additional CPS substantiations, which have not previously been granted a CPS waiver if discovered between these points (see [Practice Guidance](#) regarding applying for a waiver). The request for the waiver must be granted by COBCU for the employee, volunteer, or contractor to be hired, volunteer, or contract in the DCS licensed agency. If the subject of the check is already hired, volunteering, or contracting, the DCS licensed agency will immediately remove the subject from the work schedule, unless the necessary waiver(s) has been granted.

3. Review the results of the National Sex Offender Registry Check for a match to the subject of the check. Each name or combination of names the subject has used in his or her lifetime must be searched individually. Upon obtaining the results of a name search, the results should be printed. The screen shot must be printed, signed, and dated by the reviewing worker. For those results without matches, the reviewing worker at the DCS licensed agency will also write "NO MATCH" on the printed page that has his or her signature and date the result was reviewed. If there is a match for the subject of the check, do not hire or allow the subject to volunteer or contract with the facility. If already employed, volunteering, or contracting, then the subject of the check must be dismissed;
4. Review the results of the Local Criminal Court Records Checks by completing a court record search, including all aliases, within each county court, as well as applicable city courts, in which the subject resided in the past five (5) years. For further instructions regarding completing the Local Criminal Court Records Checks, see the [Local Law Enforcement Agency \(LEA\) Instructions](#);
5. Contact the COBCU Consultant listed on the fingerprint based status letter within five (5) days if the Local Criminal Court Record Check returns convictions of a felony, four (4) or more misdemeanors, or a misdemeanor related to the health and safety of a child and the fingerprint based letter was qualified. The COBCU Consultant will re-evaluate the fingerprint based status and, if necessary, issue a new amended status letter. If at any time the DCS licensed agency believes the Local Criminal Court Records Check report may alter the Fingerprint-Based Check Status, the DCS licensed agency will contact the COBCU Consultant listed on the Fingerprint-Based Check Status Letter for further action;
6. Request a waiver of a disqualified criminal history and/or substantiated CPS history by submitting the required information to the COBCU (see [Practice Guidance](#) for a list of the required information); and
7. Place a copy of the results for all background checks and any waiver letters in the employee's, volunteer's, or contractor's personnel file.

**Note:** A criminal history or CPS waiver granted for the purpose of employment, volunteering, or contracting in a DCS licensed agency may not be used for any additional purpose. A new waiver request must be submitted and granted for each additional purpose.

The DCS COBCU will:

1. Evaluate the criminal history report within five (5) business days of receipt of the Fingerprint-Based Check and notify, by e-mail, the DCS licensed agency's assigned contact person regarding the Fingerprint-Based Check status;
2. Provide guidance regarding conditionally disqualified or disqualified applicants and DCS licensed agency staff personnel;
3. Re-evaluate history based on the documentation received from the subject and issue a new Fingerprint-Based Check Status Letter when applicable; and

**Note:** For waivers of disqualified criminal history and substantiated CPS history:

- a. Upon receipt of the complete waiver request packet from the subject of the check and the DCS licensed agency's Executive Director or HR director, the COBCU Consultant will summarize, make a recommendation, and submit the request to the Central Office Background Check Team manager or designee within three (3) business days,



- b. The Central Office Background Check Team manager or designee will submit the recommendation to the Background Check Waiver Committee for a joint decision within two (2) business days, and
- c. Notify, by e-mail, the DCS licensed agency's assigned contact person of the waiver decision. A decision will be returned in approximately 10 business days after submission to the Background Check Waiver Committee members and the status will be either "waiver granted" or "waiver not granted" (see [Related Information](#)).

At times, additional information will be requested and this will delay the issuance of the final "Waiver granted" or "Waiver not granted" status. Additional information may be needed to submit a complete waiver or after the waiver is submitted and questions have been asked by the Background Check Waiver Committee members. Failure to submit the requested information by the stated deadline may result in the waiver denial due to failure to cooperate.

4. Collect all necessary verifications and requests as required for a request for a Medical Exception to Fingerprint and submit to Indiana State Police (ISP) for approval. Upon approval from ISP, generate the Indiana Limited Criminal History (LCH) check and issue a Medical Exception Fingerprint Granted status letter to the DCS licensed agency's contact person by e-mail if the subject is found to be eligible (see policy, [13.1 Conducting Background Checks for Licensed Residential Facilities and Child](#)).

## PRACTICE GUIDANCE

**The information below is to be submitted to COBCU in one (1) packet by the DCS licensed agency.** The following items are required to be submitted in the waiver packet for the purpose of applications for a license; facility manager; or an employment, volunteerism, contractor, and/or internship with a DCS licensed agency:

1. **Proof of Previous Waiver**

Provide the official notice previously issued to the subject by COBCU granting the criminal and/or CPS waiver for the purpose of hiring employees, volunteers, contractors, and/or interns at DCS licensed agencies, if applicable, at relicensure. The waiver cannot be processed unless this is included in the waiver packet.

2. **Letter from the Subject**

A signed letter from the subject of the check requesting a criminal and/or CPS waiver for the purpose of becoming an employee, volunteer, or contractor at a DCS licensed agency. The letter should explain in detail the situation involving each arrest and CA/N investigation. The letter should include, but is not limited to, the following:

- a. Provide the date, location, and charge of each arrest during the subject's lifetime.
  - i. Indicate which of the arrests resulted in any type of conviction,
  - ii. Indicate the date of conviction, the final conviction charge, and the level (felony or misdemeanor),
  - iii. For each conviction indicate the sentence given, time served, time on probation/parole as well as other court ordered fines, therapy, and other obligations that were court ordered,
  - iv. Indicate if the subject is currently on probation/parole or the date probation/parole was officially ended on each conviction, and
  - v. Provide any information regarding self-referred services related to this conviction or arrest.

- b. Provide the date of each CPS report and assessment involving the subject during his or her lifetime.
    - i. Indicate if the investigation resulted in a substantiation against the subject, and if substantiated, include the date of the substantiation,
    - ii. Include the final findings (physical abuse, sexual abuse, and/or neglect) for those assessments that resulted in a substantiation,
    - iii. Indicate whether the child was removed from the subject's home as a result of the substantiation. If the child was removed, provide an outline regarding the length of time out-of-home and indicate whether the child has returned to the subject's home, and
    - iv. Identify the services the subject participated in and indicate whether these were court ordered services. Also, identify what the subject learned through the services and how the subject's behavior changed as a result of the services.
  - c. Provide evidence of the person's rehabilitation, including the person's cooperation with a treatment plan.
    - i. Include and explain past and ongoing treatment if mental illness and/or substance abuse is/was a contributing factor in the previous criminal and/or CPS history of the subject. Provide any supporting documentation, and
    - ii. Explain the subject's ability and long-term plan to provide for the child's safety and well-being in an environment that will allow the child to thrive.
  - d. The subject requesting the waiver may also include any additional reference letters or documentation that would support any rehabilitation that has occurred in his or her lifetime.
3. **Letter from the DCS Licensed Agency**  
 Provide a written recommendation from the DCS licensed agency's Executive Director or HR director in regard to the subject's criminal and/or CPS waiver request. The letter must be signed by the Executive Director or HR director and submitted on the DCS licensed agency's letterhead or sent by e-mail from his or her business e-mail address. The letter should include the Executive Director's or HR director's observations of the subject of the check, as well as, the reasons he or she does or does not support the waiver request. The DCS licensed agency shall include a description of the subject's anticipated job duties if hired or for continued employment or a formal job description.
4. **CPS History Check**  
 A CPS history check must be completed and submitted for all states in which the subject of the check has resided in the previous five (5) years.
- a. For dates of residency in Indiana, the current version of [Indiana Request for a Child Protection Services \(CPS\) History Check \(SF 52802\)](#) must be completed in accordance with the published instructions. If any portion of the form is missing information or incorrectly completed, it is not acceptable and will be returned for correction.
  - b. For dates of residency outside of Indiana, the DCS licensed agency must obtain and submit the appropriate documentation for confirmation of CPS checks in that specific state.
  - c. If there is a substantiation in Indiana, a copy of the approved [Assessment of Alleged Child Abuse or Neglect \(SF 113\)](#) for all assessments must be submitted with the CPS waiver request. A screen print from the case management system is not an acceptable substitution for the completion of the appropriate form or copy of the approved [Assessment of Alleged Child Abuse or Neglect \(SF 113\)](#). This may mean

locating the hard copy case file and including supporting documentation from the hard copy file with the waiver submission.

- d. If substantiation of CA/N is found in another state, the approved assessment (the narrative similar to the [Assessment of Alleged Child Abuse or Neglect \(SF 113\)](#) in Indiana) must be obtained from that other state and submitted with the CPS waiver request.

5. **Screen Print of National Sex Offender Registry Check**

The National Sex Offender Registry Check is required for any subject 14 years or older. All sex offender searches must be completed on the Dru Sjodin National Sex Offender Public website at <http://www.nsopw.gov>. Any other website search is unacceptable and is duplicating the worker's efforts, because the other search sites are all linked to this national site.

- a. Each name or combination of names the subject has used in his or her lifetime must be searched individually.
- b. Upon obtaining the results of a name search, the results should be printed. The screen shot must be printed, signed, and dated by the assigned worker. For those results without matches, the assigned worker at the DCS licensed agency will also write "NO MATCH" on the printed page that has his or her signature and date the result was reviewed.

5. **Local Criminal Court Records Results**

A Local Criminal Court Records Check is required for all persons age 18 and older. For further instructions about completing Local Criminal Court Records Checks, see the [Local Law Enforcement Agency \(LEA\) Instructions](#).

6. **Local Name Based Arrest Record Checks**

The Local Name Based Arrest Records Check is a name-based arrest record check with the police or sheriff department. A copy of the written results must be obtained from each of the local LEAs that have jurisdiction to respond to an emergency 911 call at the subject's current home address, as well as, all other home addresses in which the subject has resided in the past five (5) years. These searches should be completed for every name or combination of names used by the subject for each LEA. Provide court issued dispositions on arrests.

**Note:** The Local Criminal Court Records Check nor the Local Name Based Arrest Record Check is an ISP Limited Criminal History Check.

7. **Fingerprint-Based Check Status Letter**

If requesting only a CPS waiver, include a copy of the Fingerprint-Based Check Status letter, which was e-mailed to the DCS licensed agency and was completed for the purpose of employment, volunteerism, or contracting and showed the fingerprint-based status of qualified. This applies to subjects 18 years and older.

<b>FORMS AND TOOLS</b>
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1. [Indiana Request for a Child Protection Services \(CPS\) History Check \(SF 52802\)](#)
2. [Assessment of Alleged Child Abuse or Neglect \(SF 113\)](#)
3. [Local Law Enforcement Agency \(LEA\) Instructions](#)



## **RELATED INFORMATION**

### **Background Check Waiver Committee**

The Background Check Waiver Committee is made up of the Residential Licensing Program Manager, the DCS Local Office Director (LOD), Regional Manager (RM), and the Central Office Background Check Team Manager or designee. Additional members may be consulted from time to time. The committee's decision may be made via phone or e-mail.

### **Factors for the DCS Licensed Agency and Background Check Waiver Committee to Consider when Recommending and/or Approving the Criminal and/or CPS History Waivers**

When evaluating background check information, the factors the DCS licensed agency and Background Check Waiver Committee should consider include, but are not limited to:

1. The length of time that has passed since the conviction, juvenile adjudication, or CA/N substantiation;
2. The severity of the offense; and/or
3. Evidence of the person's rehabilitation.

### **Disclosing Fingerprint-Based Check Information**

Neither the DCS licensed agency nor the subject of the check shall receive a copy of the official FBI or ISP transcript. DCS may verbally disclose the specific crimes to the subject of the check. If any of the checks conducted by DCS reveal an inaccurate record, the subject of the check may formally challenge the record. A Review Challenge of inaccurate information must be made to the law enforcement agency that posted the record. To refute inaccurate Indiana criminal history records or information, the subject of the check must request a Review Challenge from ISP. The subject of the check must be fingerprinted for the Review Challenge, at his or her own expense. The process of the Review Challenge takes place between ISP and the subject of the check, and DCS is not involved in the process.

### **Disqualified Fingerprint Status**

"Disqualified" fingerprint status means that unless a waiver is granted, the subject of the check is ineligible to be a(n):

1. Applicant for a license;
2. Manager of a DCS licensed agency; or
3. Employee, volunteer, contractor, and/or intern in a DCS licensed agency.

### **Conditionally Disqualified Fingerprint Status**

"Conditionally Disqualified" fingerprint status means that the subject of the check is ineligible to be hired as a new employee, volunteer, or contractor. If an existing employee, volunteer, or contractor, the conditional status must be resolved in a timely manner (per this policy), be removed from the work schedule, or have a change of duty assignment until the conditionally disqualifying arrest or conviction is resolved and the status is changed to "Qualified" (or the status is changed to "Disqualified" and a waiver is subsequently granted) the subject of the check is ineligible to be a(n):

1. Applicant for a license;
2. Manager of a DCS licensed agency; or
3. Employee, volunteer, contractor, and/or intern in a DCS licensed agency.

Examples of reported information on a Fingerprint-Based Check Report that will lead to a "Conditional Disqualification" include, but are not limited to:

1. An arrest without a disposition,
2. A conviction without the level of the conviction being a misdemeanor or a felony, or
3. A conviction where additional information on the circumstances of the arrest and conviction are required.

#### **Qualified Fingerprint Status**

“Qualified” fingerprint status means that the subject of the check is eligible to be an applicant for a license; facility manager; or an employee, volunteer, contractor, and/or intern in a DCS licensed agency, as long as the subject of the check passes all other background checks.

#### **Existence of CPS substantiated History**

The existence of CPS history of CA/N means that unless a waiver is granted, the subject of the check is ineligible to be a(n):

1. Applicant for a license;
2. Manager of a DCS licensed agency; or
3. Employee, volunteer, contractor, and/or intern in a DCS licensed agency.